



Litigating Copyright Infringement Claims

Related to Competing Software Applications

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Competing Works Litigation:

Plaintiff alleges that Defendant's software consists, in whole or in part, of the work in which the plaintiff holds a copyright.



What is at stake?

- Temporary and Preliminary Injunctive Relief focused on prohibiting development, deployment, licensing or disclosure of the software.
- Actual or statutory damages for infringement.
- Permanent Injunction prohibiting or limiting development, deployment, and licensing.



Is the software copyrightable?

- Original literal elements of computer programs and their source code
- Compilations of pre-existing protocols



What is needed to establish a claim?

- Ownership of a valid copyright
- Factual copying of the code or documentation
- Substantial similarity between the software applications



Software Copyright Ownership

- Common law copyright
- The Importance of Registration



Factual Copying

- Direct evidence
- Circumstantial evidence:

Access to copyrighted work
before creation of infringing
work

Works contain similarities
that are probative of
copying



Substantial Similarity : Abstraction – Filtration Method

Levels of abstraction:

- Main purpose
- Program structure or architecture
- Modules
- Algorithms and data structures
- Source code
- Object code



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Court Awards

- Permanent Injunctive Relief
- Damages
- Joint and Several Liability



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